

BRODSKY & SMITH

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BHARAT HEGDE,

Plaintiff,

vs.

COUPA SOFTWARE INCORPORATED,
ROB BERNSHTEYN, MICHELLE
BRENNAN, KANIKA SONI, ROGER
SIBONI, TAYLOE STANSBURY,
SCOTT THOMPSON, and FRANK VAN
VEENENDAAL,

Defendants.

Case No.:

Complaint For:

- (1) Violation of § 14 (a) of the Securities Exchange Act of 1934
- (2) Violation of § 20(a) of the Securities Exchange Act of 1934

JURY TRIAL DEMANDED

Plaintiff, Bharat Hegde (“Plaintiff”), by and through his attorneys, alleges upon information and belief, except for those allegations that pertain to him, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this stockholder action against Coupa Software Incorporated (“Coupa” or the “Company”) and the Company’s Board of Directors (the “Board” or the “Individual Defendants,” collectively with the Company, the “Defendants”), for violations of Sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”) as a result of Defendants’ efforts to sell the Company to Project CS Parent, LLC (“Parent”) through merger vehicle Project CS Merger Sub, Inc. (“Merger Sub”) (collectively with “Parent”, “Thoma

1 Bravo”) as a result of an unfair process, and to enjoin an upcoming stockholder vote on a proposed
2 all cash transaction (the “Proposed Transaction”).

3 2. The terms of the Proposed Transaction were memorialized in a December 12, 2022,
4 filing with the Securities and Exchange Commission (“SEC”) on Form 8-K attaching the definitive
5 Agreement and Plan of Merger (the “Merger Agreement”). Under the terms of the Merger
6 Agreement, Thoma Bravo will acquire all of the remaining outstanding shares of Coupa’s common
7 stock at a price of \$81.00 per share in cash. As a result, Coupa will become an indirect wholly-
8 owned subsidiary of Thoma Bravo.

9 3. Thereafter, on January 11, 2023, Coupa filed a Preliminary Proxy Statement on
10 Form PREM14A attaching the proxy statement (the “Preliminary Proxy Statement”) with the SEC
11 in support of the Proposed Transaction.

12 4. The Proposed Transaction is unfair for a number of reasons. Significantly, it
13 appears as though the Board has entered into the Proposed Transaction to procure for itself and
14 senior management of the Company significant and immediate benefits with no thought to
15 Plaintiff, as well as the Company’s public stockholders. For instance, pursuant to the terms of the
16 Merger Agreement, upon the consummation of the Proposed Transaction, Company Board
17 Members and executive officers will be able to exchange all Company equity awards for the
18 merger consideration.

19 5. Significantly, despite forming a Transaction Committee to oversee the Proposed
20 Transaction, the Preliminary Proxy statement fails to disclose what powers that committee had in
21 evaluating a potential transaction, including whether it had the power to veto a transaction not in
22 the best interests of shareholders.

23 6. In violation of the Exchange Act, Defendants caused to be filed the materially
24 deficient Preliminary Proxy Statement in an effort to Plaintiff, to vote in favor of the Proposed
25 Transaction. The Preliminary Proxy Statement is materially deficient, deprives Plaintiff of the
26 information necessary to make an intelligent, informed and rational decision of whether to vote in
27 favor of the Proposed Transaction, and is thus in violation of the Exchange Act. As detailed below,
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1 the Preliminary Proxy Statement omits and/or misrepresents material information concerning,
2 among other things: (a) the sales process and in particular certain conflicts of interest for
3 management; (b) the financial projections for Coupa, provided by Coupa management to the Board
4 and the Board's financial advisors Qatalyst Partners LP ("Qatalyst"), and (c) the data and inputs
5 underlying the financial valuation analyses, if any, that purport to support the fairness opinions
6 created by Qatalyst, and provide to the Company and the Board

7 7. Absent judicial intervention, the Proposed Transaction will be consummated,
8 resulting in irreparable injury to Plaintiff. This action seeks to enjoin the Proposed Transaction.

9 **PARTIES**

10 8. Plaintiff is a citizen of Texas and, at all times relevant hereto, has been a Coupa
11 stockholder.

12 9. Defendant Coupa provides cloud-based business spend management platform that
13 connects its customers with suppliers worldwide. Coupa is incorporated under the laws of the State
14 of Delaware and has its principal place of business at 1855 S. Grant Street San Mateo, California.
15 Shares of Coupa common stock are traded on the Nasdaq Stock Exchange under the symbol
16 "COUP".

17 10. Defendant Rob Bernshteyn ("Bernshteyn") has been a Director of the Company at
18 all relevant times.

19 11. Defendant Michelle Brennan ("Brennan") has been a director of the Company at
20 all relevant times.

21 12. Defendant Kanika Soni ("Soni") has been a director of the Company at all
22 relevant times.

23 13. Defendant Roger Siboni ("Siboni") has been a director of the Company at all
24 relevant times.

25 14. Defendant Tayloe Stansbury ("Stansbury") has been a director of the Company at
26 all relevant times.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Coupa maintains its principal offices in this district, and each of the Individual Defendants, as Company officers or directors, has extensive contacts within this District.

SUBSTANTIVE ALLEGATIONS

Company Background

23. Coupa Software Incorporated provides cloud-based business spend management platform that connects its customers with suppliers worldwide. The company provides visibility into and control over how companies spend money, optimize supply chains, and manage liquidity, as well as enables businesses to achieve savings that drive profitability. Its platform offers procurement, invoicing, expense management, and payment solutions that form the transactional engine for managing a company's business spend; and specialized solutions, including strategic sourcing, contract management, contingent workforce, supplier risk management, supply chain design and planning, treasury management, and spend analysis. It serves businesses in various industries, including healthcare and pharmaceuticals, retail, financial services, manufacturing, and technology. The company markets its platform primarily through a direct sales force. Coupa Software Incorporated was incorporated in 2006 and is headquartered in San Mateo, California.

24. The Company's most recent financial performance press release, revealing financial results from the quarter preceding the announcement of the Proposed Transaction, indicated sustained and solid financial performance. For example, in the May 5, 2022 press release announcing its 2022 Q1 financial results, the Company highlighted such milestones as total revenues of \$196.4 million, an increase of 18% compared to the same period last year. Further, subscription revenues were \$178.5 million, an increase of 27% compared to the same period last year.

25. Speaking on these positive results, CEO Defendant Bernshteyn commented on the Company's positive financial results as follows, "We began the fiscal year strong by delivering record quarterly total revenue and subscription revenue, and also yielding over 20% operating cash flow and adjusted free cash flow margins,"

1 26. These positive results are not an anomaly, but rather, are indicative of a trend of
2 continued financial success and future potential success by Coupa. Clearly, based upon these
3 positive financial results and outlook, the Company is likely to have tremendous future success.

4 27. Despite this upward trajectory and continually increasing financial results, the
5 Individual Defendants have caused Coupa to enter into the Proposed Transaction without
6 providing requisite information to Coupa stockholders such as Plaintiff.

7 ***The Flawed Sales Process***

8 28. As detailed in the Preliminary Proxy Statement, the process deployed by the
9 Individual Defendants was flawed and inadequate, was conducted out of the self-interest of the
10 Individual Defendants and was designed with only one concern in mind – to effectuate a sale of
11 the Company by any means possible.

12 29. Despite appointing a Transaction Committee to oversee the Proposed Transaction,
13 the Preliminary Proxy statement fails to disclose what powers that committee had in evaluating a
14 potential transaction, including whether it had the power to veto a transaction not in the best
15 interests of shareholders.

16 30. Additionally, the Preliminary Proxy Statement is silent as to the nature of the
17 confidentiality agreement entered into between the Company and Parent, whether this agreement
18 differed from any other agreement with potentially interested third parties not specifically
19 mentioned by the Preliminary Proxy Statement, if so in all specific manners, including all specific
20 terms of any such included “don’t-ask, don’t-waive” provisions or standstill provisions contained
21 therein, including, all specific conditions, if any, under which such provisions would fall away.

22 31. It is not surprising, given this background to the overall sales process, that it was
23 conducted in an inappropriate and misleading manner.

24 ***The Proposed Transaction***

25 32. On December 12, 2022, Coupa and Thoma Bravo issued a joint press release
26 announcing the Proposed Transaction. The press release stated, in relevant part:
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1 **SAN MATEO, Calif., Dec. 12, 2022** – Coupa Software (NASDAQ: COUP), a
2 leader in Business Spend Management (BSM), today announced that it has entered
3 into a definitive agreement to be acquired by Thoma Bravo, a leading software
4 investment firm. This is an all-cash transaction with an enterprise value of \$8.0
billion. Upon completion of the transaction, Coupa will become a privately held
company.

5 The transaction includes a significant minority investment from a wholly owned
6 subsidiary of the Abu Dhabi Investment Authority (ADIA). Under the terms of the
7 agreement, Coupa shareholders will receive \$81.00 per share in cash, which
8 represents a 77% premium to Coupa's closing stock price on November 22, 2022,
9 the last full trading day prior to media reports regarding a possible sale transaction
involving the company. The transaction consideration also represents a premium of
approximately 64% to the volume weighted average closing price of Coupa stock
for the 30 trading days ending on November 22, 2022.

10 "For more than a decade, we've been building an incredible Business Spend
11 Management Community and have proudly cemented our position as the market-
12 leading platform in our category. We're looking forward to partnering with Thoma
13 Bravo and accelerating our vision to digitally transform the Office of the CFO,"
14 said Rob Bernshteyn, chairman and chief executive officer at Coupa. "While our
ownership may change, our values do not. Every one of us at Coupa will continue
to put our customers at the center of everything we do and help them maximize the
value of every dollar they spend."

15 "This transaction is the result of a deliberate and thoughtful process that included
16 engagement with both strategic and financial parties," said Roger Siboni, Coupa's
17 lead independent director. "The Board evaluated the transaction against the
18 company's standalone prospects in the current macroeconomic climate and
19 determined that the compelling and certain cash consideration in the transaction
provides superior risk-adjusted value relative to the Company's standalone
prospects. The Board is unanimous in its belief this transaction is the optimal path
forward and in the best interest of our shareholders."

20 "Coupa has created and led the large and growing Business Spend Management
21 category. We've followed the company's success for many years and have been
22 impressed by its consistent track record of delivering high levels of value for its
23 global customer base," said Holden Spaht, a Managing Partner at Thoma Bravo.
24 "We look forward to partnering with Rob and the rest of the management team to
keep investing in the company's product strategy while driving growth both
organically and through M&A."

25 "We couldn't be more excited to partner with the talented Coupa team to keep
26 building on the incredible franchise they've created in the Business Spend
27 Management space," said Brian Jaffee, a Partner at Thoma Bravo. "Our shared
28 vision, combined with Thoma Bravo's strategic and operational expertise, will
enable Coupa to continue driving innovation, better serve its customers and

1 accelerate important growth initiatives during this next chapter as a private
2 company."

3 ***Potential Conflicts of Interest***

4 33. The breakdown of the benefits of the deal indicate that Coupa insiders are the
5 primary beneficiaries of the Proposed Transaction, not the Company's public stockholders such as
6 Plaintiff. The Board and the Company's executive officers are conflicted because they will have
7 secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff as
8 a public stockholder of Coupa.

9 34. Company insiders, currently own large, illiquid portions of Company stock all of
10 which will be exchanged for the merger consideration upon the consummation of the Proposed
11 Transaction, not shared amongst Plaintiff and other public stockholders of the Company. Notably,
12 while the Preliminary Proxy Statement provides the following information, it fails to account for
13 the cash consideration which such shares will be exchanged for:

Name of Beneficial Owner	Shares Beneficially Owned	
	Shares	Percent
Named Executive Officers and Directors:		
Robert Bernshteyn ⁽¹⁾	1,182,218	1.5%
Anthony Tiscornia	6,452	*
Todd Ford ⁽²⁾	73,399	*
Mark Riggs ⁽³⁾	13,148	*
Robert Glenn ⁽⁴⁾	30,495	*
Michelle Brennan ⁽⁵⁾	1,842	*
Roger Siboni ⁽⁶⁾	47,786	*
Kanika Soni	—	*
Tayloe Stansbury	11,751	*
Scott Thompson ⁽⁷⁾	66,650	*
Frank van Veenendaal ⁽⁸⁾	101,965	*
All Executive Officers and Directors as a Group (12 persons) ⁽⁹⁾	1,542,438	2.0%
5% Stockholders:		
The Vanguard Group ⁽¹⁰⁾	6,732,757	8.8%
BlackRock, Inc. ⁽¹¹⁾	5,694,669	7.4%
T. Rowe Price Associates, Inc. ⁽¹²⁾	5,142,074	6.7%
Viking Global Investors LP ⁽¹³⁾	4,168,030	5.4%

24 35. Additionally, Company insiders, currently own large amounts of company options,
25 restricted stock units, and other equity awards, all of which will be exchanged for the merger
26 consideration upon the consummation of the Proposed Transaction, not shared amongst Plaintiff
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and other public stockholders of the Company. Notably the Preliminary Proxy statement fails to provide an accounting of these equity awards nor the cash value they will be exchanged for.

36. In addition, certain employment agreements with certain Coupa executives, entitle such executives to severance packages should their employment be terminated under certain circumstances. These ‘golden parachute’ packages are significant and will grant each director or officer entitled to them millions of dollars, compensation not shared by Plaintiff as follows:

Potential Payments to Named Executive Officers

Name	Severance (\$) ⁽¹⁾	Company Equity Awards (\$) ⁽²⁾	Perquisites / Benefits (\$) ⁽³⁾	Total (\$)
Rob Bernshteyn	2,100,000	54,905,364	57,000	57,062,364
Anthony Tiscornia	640,000	2,868,858	36,000	3,544,858
Robert Glenn	850,000	4,911,111	25,000	5,786,111
Mark Riggs	807,500	5,327,046	36,000	6,170,546
Todd Ford	—	3,449,547	—	3,449,547

37. The Preliminary Proxy Statement also fails to adequately disclose communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for Plaintiff to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company’s stockholders.

38. Thus, while the Proposed Transaction is not in the best interests of Coupa, Plaintiff or Company stockholders, it will produce lucrative benefits for the Company’s officers and directors.

The Materially Misleading and/or Incomplete Preliminary Proxy Statement

39. On January 11, 2023, the Coupa Board caused to be filed with the SEC a materially misleading and incomplete Preliminary Proxy Statement that, in violation the Exchange Act, failed to provide Plaintiff in his capacity as a Company stockholder with material information and/or

1 provides materially misleading information critical to the total mix of information available to
2 Plaintiff concerning the financial and procedural fairness of the Proposed Transaction.

3 Omissions and/or Material Misrepresentations Concerning the Sales Process leading up
4 to the Proposed Transaction

5 40. Specifically, the Preliminary Proxy Statement fails to disclose material information
6 concerning the process conducted by the Company and the events leading up to the Proposed
7 Transaction. In particular, the Preliminary Proxy Statement fails to disclose:

- 8 a. Adequate disclosure as to what powers that the Transaction Committee had in
9 evaluating a potential transaction;
- 10 b. Whether the confidentiality agreements entered into by the Company with
11 Parent differed from any other unnamed confidentiality agreement entered into
12 between the Company and an interested third parties;
- 13 c. All specific conditions under which any standstill provision contained in any
14 entered confidentiality agreement entered into between the Company and
15 potentially interested third parties throughout the sales process, including
16 Thoma Bravo and/or its affiliates, would fall away; and
- 17 d. Adequate and complete disclosure of communications regarding post-
18 transaction employment during the negotiation of the underlying transaction
19 must be disclosed to stockholders.

20 Omissions and/or Material Misrepresentations Concerning Coupa's Financial Projections

21 41. The Preliminary Proxy Statement fails to provide material information concerning
22 financial projections for Coupa provided by Coupa management to the Board and Qatalyst, and
23 relied upon by Qatalyst in its analyses. The Preliminary Proxy Statement discloses management-
24 prepared financial projections for the Company which are materially misleading.

25 42. Notably the Preliminary Proxy Statement reveals that as part of its analyses,
26 Qatalyst reviewed, "reviewed the Financial Forecasts prepared by the management of the
27 Company".
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1 43. Therefore, the Preliminary Proxy Statement should have, but fails to provide,
2 certain information in the projections that Coupa management provided to the Board and Qatalyst.
3 Courts have uniformly stated that “projections ... are probably among the most highly-prized
4 disclosures by investors. Investors can come up with their own estimates of discount rates or []
5 market multiples. What they cannot hope to do is replicate management’s inside view of the
6 company’s prospects.” *In re Netsmart Techs., Inc. S’holders Litig.*, 924 A.2d 171, 201-203 (Del.
7 Ch. 2007)

8 44. With regard to the *Financial Forecasts* prepared by Coupa, the Preliminary Proxy
9 Statement fails to disclose material line items for important metrics

- 10 a. Non-GAAP Operating Income, including all underlying inputs, metrics, and
11 assumptions, including specifically: cost of goods sold and operating expenses,
12 the impact of stock-based compensation, amortization of acquired intangibles
13 and certain non-recurring items;
14 b. Unlevered Free Cash Flow, including all underlying inputs, metrics, and
15 assumptions, including specifically: the impact of cash taxes, the net impact of
16 depreciation and amortization, changes in net working capital, capital
17 expenditures, and other operating cash inflows and expenses, as well as the
18 specific “certain adjustments including a long-term effective cash tax rate”
19 made for fiscal year 2028; and
20 c. Adjusted Free Cash Flow, including all underlying inputs, metrics, and
21 assumptions, including specifically: the net impact of interest income and
22 expenses, adjusted for taxes.

23 45. The Preliminary Proxy Statement also fails to disclose a reconciliation of all non-
24 GAAP to GAAP metrics utilized in the projections.

25 46. This information is necessary to provide Plaintiff, in their capacity as a Company
26 stockholder, a complete and accurate picture of the sales process and its fairness. Without this
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information, Plaintiff is not fully informed as to Defendants' actions, including those that may have been taken in bad faith, and cannot fairly assess the process.

47. Without accurate projection data presented in the Preliminary Proxy Statement, Plaintiff is unable to properly evaluate the Company's true worth, the accuracy of Qatalyst's financial analyses, or make an informed decision whether to vote in favor of the Proposed Transaction. As such, the Board has violated the Exchange Act by failing to include such information in the Preliminary Proxy Statement.

Omissions and/or Material Misrepresentations Concerning the Financial Analyses by Qatalyst

48. In the Preliminary Proxy Statement, Qatalyst describes its fairness opinion and the various valuation analyses performed to render such opinion. However, the descriptions fail to include necessary underlying data, support for conclusions, or the existence of, or basis for, underlying assumptions. Without this information, one cannot replicate the analyses, confirm the valuations or evaluate the fairness opinions.

49. With respect to the *Discounted Cash Flow Analysis*, the Preliminary Proxy Statement fails to disclose the following:

- a. The inputs, metrics, and assumptions used to determine range of discount rates from 9.5% to 13.0%;
- b. The Company's weighted average cost of capital utilized;
- c. The implied net present value of a corresponding terminal value of the Company utilized;
- d. The specific inputs and assumptions used to determine the utilized long-term cash tax rate of 15%;
- e. The specific inputs and assumptions used to determine the utilized range of fully diluted enterprise value to next-twelve-months' estimated UFCF multiples of 20.0x to 32.0x;
- f. The Company's cash and cash equivalents as of October 31, 2022;

- g. The Company's implied net present value of estimated federal tax savings due to its net operating losses for the fiscal years 2028 and beyond;
- h. the face value of the outstanding Convertible Notes as of October 31, 2022; and
- i. The Company's redeemable non-controlling interests in Coupa K.K. (the Company's Japanese joint venture), as of October 31, 2022.

50. With respect to the *Selected Companies Analysis*, the Preliminary Proxy Statement fails to disclose the following:

- a. The specific inputs and assumptions used to determine the utilized CY2023E Revenue multiple reference range of 3.8x to 7.0x; and
- b. The number of fully diluted shares of Company common stock outstanding as of December 8, 2022.

51. With respect to the *Selected Transactions Analysis*, the Preliminary Proxy Statement fails to disclose the following:

- a. The specific date on which each transaction closed;
- b. The value of each transaction compared;
- c. The specific inputs and assumptions used to determine the utilized LTM Revenue Multiple reference ranges of 6.0x to 11.0x;
- d. The number of fully diluted shares of Company common stock outstanding as of December 8, 2022; and
- e. The specific inputs and assumptions used to determine the utilized NTM Revenue Multiple reference ranges of 5.5x to 9.5x.

52. These disclosures are critical for Plaintiff to be able to make an informed decision on whether to vote in favor of the Proposed Transaction.

53. Without the omitted information identified above, Plaintiff is missing critical information necessary to evaluate whether the proposed consideration truly maximizes his value and serves his interest as a stockholder. Moreover, without the key financial information and related disclosures, Plaintiff cannot gauge the reliability of the fairness opinion and the Board's

determination that the Proposed Transaction is in his best interests as a public Coupa stockholder. As such, the Board has violated the Exchange Act by failing to include such information in the Preliminary Proxy Statement

FIRST COUNT

Violations of Section 14(a) of the Exchange Act

(Against All Defendants)

54. Plaintiff repeats all previous allegations as if set forth in full herein.

55. Defendants have disseminated the Preliminary Proxy Statement with the intention of soliciting stockholders, including Plaintiff, to vote in favor of the Proposed Transaction.

56. Section 14(a) of the Exchange Act requires full and fair disclosure in connection with the Proposed Transaction. Specifically, Section 14(a) provides that:

It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.

57. As such, SEC Rule 14a-9, 17 C.F.R. 240.14a-9, states the following:

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

60. The Individual Defendants were at least negligent in filing a Preliminary Proxy Statement that was materially misleading and/or omitted material facts necessary to make the Preliminary Proxy Statement not misleading.

64. The Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the materially false and misleading statements complained of herein. The Individual Defendants were aware or should have been aware that materially false and misleading statements were being issued by the Company in the Preliminary Proxy Statement and nevertheless approved, ratified and/or failed to correct those statements, in violation of federal securities laws. The Individual Defendants were able to, and did, control the contents of the Preliminary Proxy Statement. The Individual Defendants were provided with copies of, reviewed and approved, and/or signed the Preliminary Proxy Statement before its issuance and had the ability or opportunity to prevent its issuance or to cause it to be corrected.

65. The Individual Defendants also were able to, and did, directly or indirectly, control the conduct of Coupa's business, the information contained in its filings with the SEC, and its public statements. Because of their positions and access to material non-public information available to them but not the public, the Individual Defendants knew or should have known that the misrepresentations specified herein had not been properly disclosed to and were being concealed from Plaintiff and Company, and that the Preliminary Proxy Statement was misleading. As a result, the Individual Defendants are responsible for the accuracy of the Preliminary Proxy Statement and are therefore responsible and liable for the misrepresentations contained herein.

66. The Individual Defendants acted as controlling persons of Coupa within the meaning of Section 20(a) of the Exchange Act. By reason of their position with the Company, the Individual Defendants had the power and authority to cause Coupa to engage in the wrongful conduct complained of herein. The Individual Defendants controlled Coupa and all of its employees. As alleged above, Coupa is a primary violator of Section 14 of the Exchange Act and SEC Rule 14a-9. By reason of their conduct, the Individual Defendants are liable pursuant to section 20(a) of the Exchange Act.

WHEREFORE, Plaintiff demands injunctive relief, in his favor and against the Defendants, as follows:

A. Enjoining the Proposed Transaction;

1 B. In the event Defendants consummate the Proposed Transaction, rescinding it and
2 setting it aside or awarding rescissory damages to Plaintiff;

3 C. Directing the Individual Defendants to exercise their fiduciary duties to disseminate
4 a Preliminary Proxy Statement that does not contain any untrue statements of material fact
5 and that states all material facts required in it or necessary to make the statements contained
6 therein not misleading;

7
8 D. Awarding Plaintiff the costs of this action, including reasonable allowance for
9 Plaintiff's attorneys' and experts' fees; and

10 E. Granting such other and further relief as this Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury on all issues which can be heard by a jury.

13
14 Dated: January 13, 2023

BRODSKY & SMITH

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